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IN THE

Supreme Court of the United States

October Term, 1969

No. 1514

ALFONSO SABINO,

Petitioner,

vs.

SUPERIOR COURT OF LOS ANGELES COUNTY, STATE OF CALIFORNIA; and, HENRY W. SHATFORD, as a Judge of said Court,

Respondents.

Petition for a Writ of Certiorari Directed to the Supreme Court of the State of California.

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Los Angeles, California
90029

Petitioner, Pro Se

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To the Honorable Chief Justice Warren E. Burger and the Honorable Associate Justices of the Supreme Court of the United States:

Comes now Alfonso Sabino and petitions this Honorable Court for a writ of certiorari directed to the Supreme Court of the State of California to review and reverse an order and judgment of Division Four of the Court of Appeal, Second Appellate District, State of California, which summarily denied petitioners application for a writ of prohibition, thereby refusing to prohibit proceedings and enforcement of orders of the respondent court and respondent judge, which were, and are in excess of the jurisdiction of the respondents, and in violation of due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, and in violation of laws of the State of California.

Justice William O. Douglas extended time to file this petition for certiorari to May 1, 1970.

OPINION BELOW

Neither the California Court of Appeal, nor the Supreme Court, published an opinion. There was merely a minute order of the Court of Appeal denying the petition for writ of prohibition.

Thereafter, a timely petition for hearing in the Supreme Court of California was denied on December 17, 1969.

JURISDICTION

Petitioner's application for the writ of prohibition to the Court of Appeal was summarily denied and entered on November 20, 1969, without issuance of an alternative writ or order to show cause. California rules of court specifically do not permit a petition for rehearing after denial by the Court of Appeal of a petition for a writ within its original jurisdiction without issuance of an alternative writ or order to show cause.

Petition for hearing from the denial of the Court of Appeal was duly and regularly filed in the Supreme Court of California. That court denied a hearing by order dated December 17, 1969, which was entered that same day.

This petition for writ of certiorari is being filed within 90 days of the order of the California Supreme Court denying a hearing of and an extension of time by the Honorable Justice William O. Douglas to May 1, 1970.

Jurisdiction is conferred on this court by Title 28, Section 1257(3), United States Code.

QUESTIONS PRESENTED BY THIS WRIT

1. Whether petitioner has been denied due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, where his declaration for disqualification of the respondent judge, authorized by the laws of the State of California (Section 170.6 Code of Civil Procedure of California), was timely filed, but the respondent judge proceeded to make orders for physical examination, after the filing of petitioner's declaration of disqualification, and the challenged judge refused to disqualify himself pursuant to the declaration of disqualification until after he made orders for the physical examination of petitioner.

2. Whether petitioner has been denied equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, where the provisions of California Statute (Section 170.6 Code of Civil Procedure of California) have been applied differently to petitioner than set forth in California decisions interpreting the requirements and application of the statutes under particular and similar circumstances.

3. Whether petitioner was discriminated against and deprived of his rights to represent himself in propria persona in violation of due process of law and equal protection of the laws

guaranteed by the Fourteenth Amendment to the Constitution by discriminatory application of the laws to petitioner while representing himself in propria persona.

4. Whether petitioner has been denied and deprived of proper notice and an opportunity to be heard in violation of due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, by the discriminatory tactics employed by respondents which deprived and prevented petitioner of an opportunity to have substantial and necessary objections and exceptions of record in the action.

5. Whether orders made by the respondent court and judge are a nullity and unenforcible because of the disqualification of the respondent judge under the provisions of the laws of the State of California, and by reason of violation of petitioner's rights under the due process and equal protection rights guaranteed under the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The provisions of the Fourteenth Amendment to the Constitution of the United States, Section 1, which reads: " ; nor shall any State deprive any person of life. liberty, or property,

without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." (Appended hereto as Appendix A)

Section 170.6 Code of Civil Procedure of California, appended hereto as Appendix A, pages 1 to 5 has been set forth at length and verbatim as contained in West's California Codes, Cumulative Pocket Part, for use in 1969-70 pages 16-17 thereof.

STATEMENT OF THE CASE WITH FACTS

On September 23, 1968, petitioner filed civil action No. EAC 8186 in the Superior Court of the State of California for the County of Los Angeles, for personal injury and property damage, automobile collision, wherein Bill Washington White is a defendant. Petitioner retained counsel to represent him. Petitioner, merely for inspecting the court file to determine the status of the action, was unjustly accused by counsel of being "sneaky". Petitioner having learned that his best interests were not being protected, relieved counsel and chose to represent himself. Shortly thereafter counsel for defendant White filed a motion for an order for physical examination of petitioner, which was noticed for a courtroom other than the one in which the respondent judge presided. Defendants' motion was noticed for hearing in Department C on November 20, 1969.

On November 17, 1969, petitioner for the first time learned that the hearing of that motion would be transferred to Department A, where the respondent judge presides, if petitioner would not consent to a hearing of the matter before the commissioner in Department C. Under California law, a hearing before a commissioner must be stipulated to by the litigants before a commissioner has jurisdiction.

Petitioner for the first time learned on November 17, 1969 that the respondent judge was biased and prejudiced against litigants who represent themselves in propria persona, and was particularly biased and prejudiced against petitioner.

On November 17, 1969, as soon as it was physically possible for petitioner to prepare a written declaration for disqualification of the respondent judge, such written declaration was prepared and filed according to the provisions of section 170.6 Code of Civil Procedure of California, to disqualify the respondent judge and prevent him from hearing and ruling on defendants motion on December 20, 1969. According to the provisions of the statute, petitioner's declaration was timely, as it was filed as soon as possible after petitioner learned that the respondent judge was biased and prejudiced against him.

On December 20, 1969, when petitioner declined to stipulate to a commissioner in Department C, the matter

was transferred to the respondent judge. At such time, the respondent judge refused to disqualify himself but proceeded to make an order for physical examination of petitioner. Such order was made without affording petitioner prior knowledge of knowing the contents thereof, nor affording petitioner any opportunity to make objections or take exceptions thereto or any parts thereof.

Immediately after the respondent judge made his order for physical examination of plaintiff on November 20,1969, he disqualified himself in the action and made it understood that his disqualification would only be effective after he made the order and would not invalidate the order just made.

Petitioner immediately, orally, objected to and took exception to the proceedings and the making of any order by the respondent judge, and petitioner claimed violation of due process and equal protection rights under the Fifth and Fourteenth Amendments to the Constitution of the United States. The respondent judge ruled that petitioner's declaration of disqualification was not timely and that petitioner's constitutional guarantees were not violated.

To restrain enforcement of the respondent judge's orders, petitioner applied for a writ of prohibition in the Court of Appeal of California, Second Appellate District. In the petition, the validity of the judge's orders were challenged and petitioner

again claimed bias and prejudice of the respondent judge and violation of petitioner's due process and equal protection rights under the Fifth and Fourteenth Amendments to the Constitution of the United States, but these questions were never ruled upon by the Court of Appeal and the petition was summarily denied merely by a very brief minute order.

Petitioner, regularly and according to procedural requirements, petitioned the Supreme Court of California for a hearing after the denial by the Court of Appeal. Again petitioner sought a determination on the questions of violation of petitioner's rights under the due process and equal protection guarantees of the Fifth and Fourteenth Amendments to the Constitution of the United States and violations of rights under California statutes and laws. The Supreme Court summarily denied the petition for a hearing in that court and the questions of petitioner's Federal Constitutional rights and rights under California law and statutes still remain undecided.

In the Superior Court, subsequent to the orders of the respondent Judge, defendant White has moved for dismissal of the action for failure of petitioner to comply with the orders of respondent Judge, which petitioner claims are a nullity under California law, because of disqualification of the judge. Other judges of the Superior Court, based on the contention of validity of the respondent judge's orders for reasons that

the Court of Appeal and the Supreme Court failed to decide the questions involved, have been and are threatening to order dismissal of petitioner's action. Presently, a motion for dismissal of the action remains undecided in the Superior Court. Petitioner's action is in jeopardy of being dismissed.

In all proceedings in the Superior Court, the record and transcripts of proceedings clearly show that the respondent judge, as well as subsequent judges, have all been partial to defendant White because he is represented by attorneys. The Courts are constantly reluctant to afford me equal protection, fairness, and an unbiased and unprejudiced opportunity to be heard solely because I am representing myself in propria persona and the attorneys for defendant are being afforded unjustified partiality and advantages not allowed to petitioner for proper representation and preservation of the record in the action.

Original court reporter's transcripts are herewith lodged with this petition which confirms the timely objections of petitioner and continuous assertions of violation of Federal Constitutional rights.

REASONS FOR GRANTING WRIT

This is another one of the cases in which the California Courts are reluctant to afford a litigant representing himself in propria persona, the basic fairness, the equal protection of the laws, rights, and constitutional guarantees to which every litigant is inherently entitled to in this country, whether he be representing himself in propria persona or be represented by one or many attorneys.

The right to exercise the statutory right under the provisions of 170.6 Code of Civil Procedure of California, has long been recognized as a substantial right and part of due process. In Mc. Cauley v. Superior Court 190 Cal. App 2d 562 at page 564, Justice Guffin said: "The right conferred by Code of Civil Procedure, section 170.6, is a substantial right which is now part of the system of due process and judicial fair play in this state."

Section 170.6 Code of Civil Procedure of California specifically authorizes the filing of declaration of disqualification is timely in proceedings which are not the trial of a cause if the motion is made "not later than the commencement of the hearing." and if the affidavit,(a declaration in California has the same force and effect as an affidavit), is sufficient and timely, the judge sought to be disqualified has

no jurisdiction. Calhoun v. Superior Court 51 Cal 2d 257, and according to the opinions of the California Courts, orders made by a judge who has been timely disqualified are null, void and unenforceable.

This court has held in Hovey v. Elliott, 167 U. S. 409, 42 L Ed. 215 that proceedings in which a litigant has not had proper notice nor an opportunity to be heard are a violation of due process of law under the Fourteenth Amendment.

It is time that this Court lay down its proper rule of law that the Courts are for all litigants equally and do not exist solely for the benefit of attorneys and judges to do at will as they please, or engage in practices and procedures which are in fact unconstitutional and in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Petitioner asks that his right to have his day in court be preserved with all the fairness and impartiality to which he is entitled, free of bias and prejudice, and be afforded the fundamental right to have proper notice and an opportunity to be heard and preserve the record by ample opportunity to object, take exception and preserve the record in the action as petitioner sees beneficial or fit for any future purposes.

Unless petitioner is granted a hearing by this Court, he shall continue to suffer severe abuses of his substantial and constitutional rights and ultimately be deprived of his day in court and subjected to great expense and time consuming appeals, and litigation, solely because petitioner is representing himself in propria persona.

This Court should grant a hearing to determine petitioner's Federal Constitutional rights, or in the alternative, as a last resort, make an order commanding the Supreme Court of California to review the matters set forth herein, and in the record submitted herewith, in conformity with applicable laws and decisions.

Respectfully submitted,

/S/ ALFONSO SABINO

Alfonso Sabino
Petitioner Pro Se

APPENDIX 1.

AMENDMENT XIV

Section 1. ; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX A

Statutes Involved:

Section 170.6 Prejudice against party; attorney or interest thereof; motion and affidavit; assignment of another judge; number of motions; continuance; form of affidavits; cumulative remedy; severability

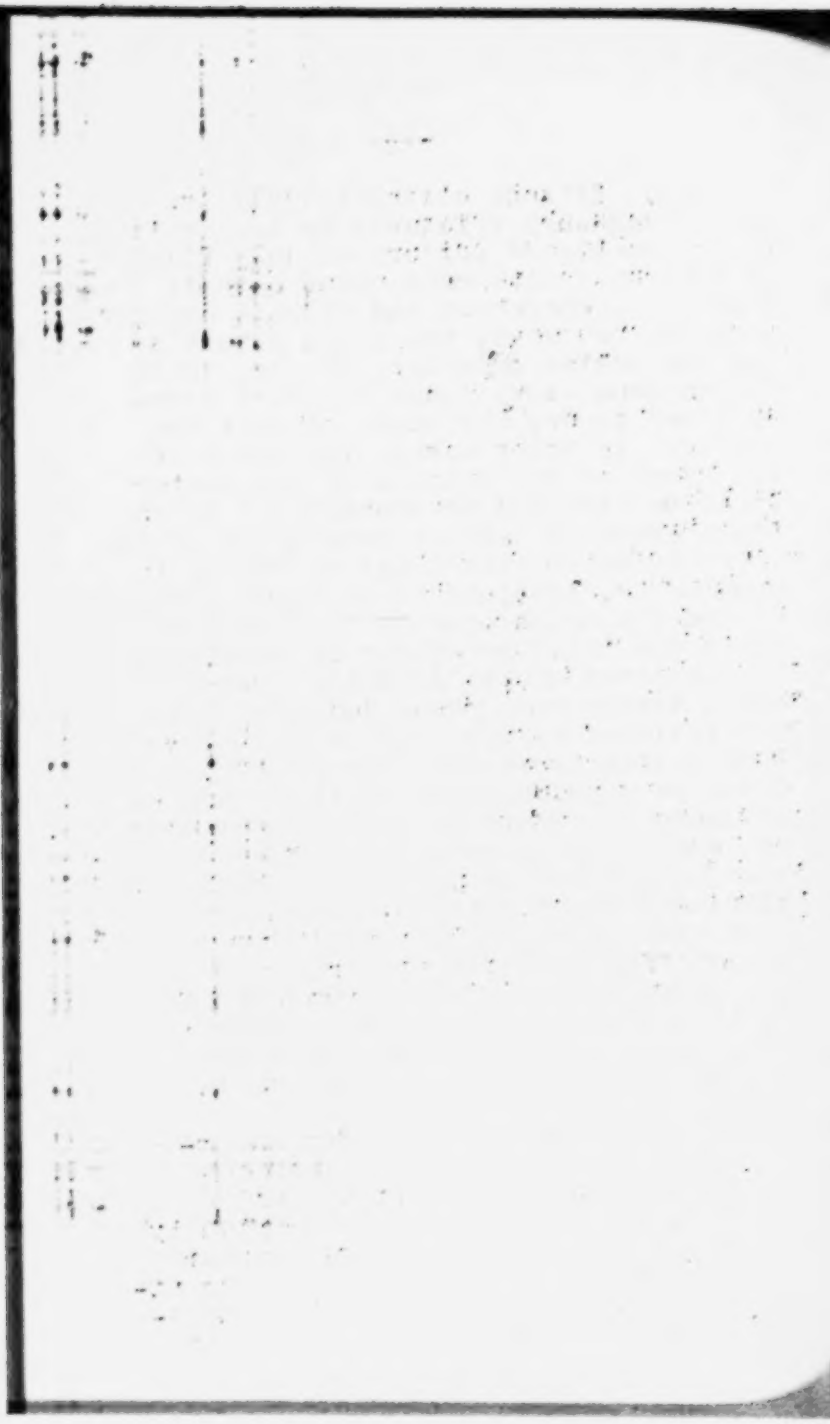
"Section 170.6 (1) No judge or court commissioner of any superior, municipal or justice court of the State of California shall try any civil or criminal action or special proceeding of any kind or character nor hear any matter therein which involves a contested issue of law or fact when it shall be established as hereinafter provided that such judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in such action or proceeding.

(2) Any party to or any attorney appearing in any such action or proceeding may establish such prejudice by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury or an oral statement under oath that the judge or court commissioner before whom such action or proceeding is pending or to whom it is assigned is prejudiced against any such party or attorney or the interest of such party or attorney so that such party or attorney cannot or believes that he cannot have a fair and impartial trial or hearing before such judge or court commissioner. Where the judge

or court commissioner assigned to or is scheduled to try the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least five days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. In no event shall any judge or court commissioner entertain such motion if it be made after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there be no such statement, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion must be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge or court commissioner has presided at or acted in connection with a pretrial conference or other hearing, proceeding or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for herein at the time and in the manner hereinbefore provided.

(3) If such motion is duly presented and such affidavit or declaration under penalty of perjury is duly filed or such oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge or court commissioner to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge or court commissioner of the court in which the trial or matter is pending or, if there is no other judge or court commissioner of the court in which the trial or matter is pending, the Chairman of the Judicial Council shall assign some other judge or court commissioner to try such cause or hear such matter as promptly as possible. Under no circumstances shall a party or attorney be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding only one motion for each side may be made in any one action or special proceeding.

(4) Unless required for the convenience of the court or unless good cause is shown, a continuance of the trial or hearing shall not be granted by reason of the making of a motion under this section. If a continuance is granted, the cause or matter shall be continued from day to day or for other limited



periods upon the trial or other calendar and shall be reassigned or transferred for trial or hearing as promptly as possible.

(5) Any affidavit filed pursuant to this section shall be in substantially the following form:

(Here set forth court and cause)

State of California)
) ss.
County of)

- - - - - - - - -, being first duly sworn, deposes and says: That he is a party (or attorney for a party) to the within action (or special proceeding). That- - - - - - - - the judge or court commissioner before whom the trial of the (or a hearing in the) aforesaid action (or special proceeding) is pending (or to whom it is assigned), is prejudiced against the party (or his attorney) or the interest of the party (or his attorney) so that affiant cannot or believes that he cannot have a fair and impartial trial or hearing before such judge or court commissioner.

- - - - - - - - - - -

Subscribed and sworn to before me this-------day of-----, 19-----.
(Clerk or notary public or other officer administering oath)

(6) Any oral statement under oath or declaration under penalty of perjury

made pursuant to this section shall include substantially the same contents as the affidavit above.

(7) Nothing in this section shall affect or limit the provisions of Section 170 and Title 4, Part 2, of this code and this section shall be construed as cumulative thereto.

(8) If any provision of this section or the application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are declared to be severable.
(As amended Stats. 1967,c 1602, p. 3832, Section 2.)